

ISSUE DATE: July 21, 2000

DOCKET NO. P-5670,430/M-00-499

ORDER REJECTING INTERCONNECTION AGREEMENT AND DIRECTING REVISED
FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Joint Application for
Approval of the Master Interconnection and
Resale Agreement Between Rhythms Links,
Inc. and Sprint Minnesota, Inc., Under the
Federal Telecommunications Act of 1996

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PROCEDURAL HISTORY

On April 21, 2000, Sprint Minnesota, Inc. (Sprint) and Rhythms Links, Inc. (Rhythms) filed for Commission approval of a Master Interconnection Agreement for interconnection between Sprint and Rhythms (the Parties). The Parties believe that the Interconnection Agreement complies with Section 252(e) of the Federal Act; it does not discriminate against any other telecommunications carrier and is consistent with the public interest, convenience and necessity.

On May 31, 2000, the Minnesota Department of Commerce (the Department) filed comments. The Department recommended that the Commission reject the proposed agreement and make certain modifications in three subject areas (assignment, amendments and modifications, and third party beneficiaries) so the Agreement comports with previous Commission decisions regarding interconnection agreements.

The Commission met on July 11, 2000 to consider this matter.

FINDINGS AND CONCLUSIONS

I. INTERCONNECTION AND RESALE AGREEMENT BETWEEN SPRINT AND RHYTHMS

The Agreement between Sprint and Rhythms contains terms and conditions for interconnection, local resale, and network elements. The Agreement also contains various provisions covering network maintenance, service quality, dispute resolution, notices, amendments and assignments. The Agreement specifies the term of the Agreement, billing, payment, liability, taxes, indemnification and other general provisions. The term of the Agreement begins upon approval

of the Commission and continues until February 28, 2002. The prices for local resale, exchange of local traffic and unbundled network elements are shown in Attachment I of the Agreement.

II. COMMISSION ANALYSIS AND ACTION

The Telecommunications Act of 1996 (the Federal Act or Act) specifies the Commission's role with respect to a negotiated agreement for the resale of local exchange service such as the Agreement between Sprint and Rhythms in this matter. Section 252(e) states:

(e) Approval by State Commission.--

(i) Approval Required.--Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for Rejection.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that--

(i) an agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.....

Based on its review of the Parties' Agreement, the Commission concludes that most provisions are acceptable and only three require comment and correction, those regarding assignment, amendments and modifications, and third party beneficiaries.

A. Assignment

Section 13 of the Agreement states that an assigning party must notify the other party in writing. The Agreement does not require notice to the Commission of an assignment by a party. The Commission has consistently rejected prior agreements that did not contain language that the Commission be given 60 days notice of assignment on the grounds that the absence of such language was not consistent with the public interest. Telecommunications services are essential to the public safety and to everyday operation of our society and economy. The Commission cannot protect the public interest in reliable service unless it can examine the fitness of the prospective assignees.

Consistent with these prior decisions and based on its finding in this matter that the absence of language assuring Commission notice of any assignment is inconsistent with the public interest, convenience and necessity, the Commission will reject the Agreement. The deficiency can be remedied by inclusion of language that 60 days notice of assignment be

given to the Commission.

B. Amendments and Modifications

Section 24 of the Agreement states that any amendment must be in writing and signed by both parties. As drafted, the section does not require approval of any modifications by the Commission. The Commission has consistently rejected prior agreements that did not contain language providing for Commission review and approval before any amendment goes into effect. The Commission has concluded that absence of such language is not consistent with the public interest. In those Orders, as well as in this one, the Commission finds that it cannot perform its duty to protect the integrity of the network, ensure high quality service, and promote a free and open telecommunications market if interconnection agreements can be amended without Commission approval. This would not only leave the public interest unprotected, it would render meaningless the Act's requirement that state commissions review and approve interconnection agreements.

In accord with these prior decisions and based on the aforementioned factors, the Commission will reject the Agreement on this account as inconsistent with the public interest, convenience and necessity. The deficiency can be remedied by including language that amendments require Commission approval.

C. Third Party Beneficiaries

Section 16 of the Agreement states that it does not give any rights or remedies to anyone not a Party to the Agreement. The section does not contain language that recognizes the Commission as an interested party on behalf of the public that is entitled to notice of any further administrative or judicial or other proceeding regarding the contract and the opportunity to intervene in the proceeding on behalf of the general public.

The Department recommended, and the Commission agrees, that the Agreement should be rejected for lack of such language since the absence of such language is contrary to the public interest. The contract's failure to acknowledge the Commission's continuing responsibility to monitor contract performance compels rejection. Under Minnesota law and the Federal Act, the Commission has a duty to protect the public interest as it is affected by interconnection agreements. This duty does not end at the time of final contract approval, but continues throughout the life of the contract, as its consequences unfold.

Accordingly, the Commission will reject the Agreement on this account, noting that the deficiency can be remedied by inclusion of the following language:

Notwithstanding the foregoing, the Parties agree to give notice to the Commission of any lawsuits or other proceedings that involve or arise under the Agreement to ensure that the Commission has the opportunity to seek to intervene in these proceedings on behalf of the public interest.

The Commission notes that the Department recommended language that the Commission required in earlier versions of interconnection agreements. More recently, however, the Commission has required the language set forth above, requiring notice to the Commission so it can intervene in any lawsuits or other proceedings arising from the agreement.

D. Moving Forward

The Commission will expedite the process of approving a revised agreement that conforms to the Commission's decision by

- requiring the Parties to file a revised Agreement incorporating the Commission's findings of deficiencies within two weeks of the service date of the Commission's Order;
- delegating authority to the Executive Secretary to examine the revisions filed by the Parties, to confirm that the deficiencies have been corrected as recommended, and to issue a letter to the Parties approving the revised Agreement as of the date of filing; and
- directing that if the Parties do not reach an agreement that addresses the Commission's findings of deficiencies, they should inform the Commission of that within two weeks of the Commission's Order.

ORDER

1. The Interconnection and Resale Agreement between Rhythms Links, Inc. and Sprint Minnesota, Inc. is rejected due to the three defective sections noted in the text of this Order.
2. Within two weeks of the date of this Order, the parties shall file a revised Agreement correcting the deficiencies noted in this Order.
3. The Executive Secretary is hereby authorized to examine the revisions filed by the Parties, to confirm that the deficiencies have been corrected as recommended, and to issue a letter to the Parties approving the revised Agreement as of the date of filing.

4. If the Parties do not reach an agreement that addresses the Commission's findings of deficiencies, they shall inform the Commission of that within two weeks of the Commission's Order.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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